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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,872	01/11/2005	Erik Gosuinus Petrus Schuijers	NL 020693	6506
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EXAMINER				
LERNER, MARTIN				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/520,872

Applicant(s)

SCHUIJERS ET AL.

Examiner

MARTIN LERNER

Art Unit

2626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 to 10 and 12 to 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 to 8, 12 to 13, and 16 to 18 is/are allowed.
- 6) ☒ Claim(s) 9 to 10 and 14 to 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicants are required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP §608.01.

The Specification, Page 15, Line 4, contains browser-executable code, directed to www.codingtechnologies.com, which should be cancelled, because any issued patent may contain a hyperlink to an inactive, or redirected, website.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. §101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 9 to 10 and 14 to 15 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter.

Independent claims 9 and 14 represent non-statutory subject because they include limitations that can be construed as means plus function language under 35 U.S.C. §112, 6th ¶, and Applicants' Specification provides an embodiment where the invention can be a signal transmitted over a data network or a signal transmitted by a broadcast service. The USPTO takes the position that any claim directed to a signal

represents non-statutory subject matter under 35 U.S.C. §101. Applicants' Specification, Page 14, Line 34 to Page 15, Line 1, discloses that "the invention can be embodied as a signal transmitted over a data network such as the Internet, or a signal transmitted by a broadcast service." Following the logic of means plus function terminology, then, the means plus function claims must be read in accordance with any equivalents disclosed by the Specification under 35 U.S.C. §112, 6th ¶. Thus, any language that can be construed under a means plus function interpretation, in combination with a disclosure of a signal embodiment, runs afoul of the position that a signal claim is non-statutory under the policy set forth by the USPTO. Applicants can obviate the rejection simply by cancelling the sentence referring to the signal embodiment from the Specification, Page 14, Line 34 to Page 15, Line 1.

Allowable Subject Matter

4. Claims 1 to 8, 12 to 13, and 16 to 18 are allowed.
5. Claims 9 to 10 and 14 to 15 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. §101, set forth in the Office Action.

The following is a statement of reasons for the indication of allowable subject matter:

Independent claims 1, 9, and 12 to 14 are allowable because the prior art of record does not disclose or reasonably suggest the limitations of determining a relevance of a transient by looking at a difference between a first parameter from a first window that surrounds a transient location and a second parameter from a second

window that surrounds the transient location, the second window being shorter than the first window, and inserting additional parameters in the encoded signal if the difference is greater than a threshold. It is known in the prior art of audio encoding to encode audio signals with long and short windows, where a short window more efficiently encodes transients. However, the prior art of record does not disclose or reasonably suggest looking at a difference in parameters between long and short windows, and inserting additional parameters if the difference is greater than a threshold. Applicants' Specification, Page 12, Lines 19 to 28, describes a method of determining a relevance of a transient by looking at a difference between spatial parameters derived from a longer window and a shorter window surrounding the transient location, and inserting extra spatial parameters if the difference is significant. The Specification, Page 3, Lines 5 to 8, states an objective of providing an audio encoder/decoder that mitigates pre-echo artifacts related to parametric multi-channel encoding.

Response to Arguments

6. Applicants' arguments filed 15 October 2008 have been fully considered but they are not persuasive.

Firstly, it is noted that Applicants do not appear to have responded to the objection to the browser-executable code or embedded hyperlink found in the Specification. Applicants are respectfully requested to delete the embedded hyperlink from the Specification.

Secondly, Applicants state they have amended independent claims 9 and 14 to a better form that more clearly recites statutory subject matter. Applicants have removed the express means plus function language from independent claims 9 and 14, so that the claims now recite "a sum generator configured to generate" instead of "means for generating", "an analyzer configured to analyze" instead of "means for analyzing", *etc.*

However, these amendments do not resolve the rejection of independent claims 9 and 14 as setting forth non-statutory subject matter under 35 U.S.C. §101. Applicants should be aware that, as stated in the rejection, the problem is not with the claims, but with the Specification. The intent of the rejection is to have Applicants delete the subject matter setting forth a signal embodiment from Page 14, Line 34 to Page 15, Line 1 of the Specification, not to amend independent claims 9 and 14 to remove the means plus function language.

To understand why it is insufficient to amend the claims to remove the means plus function language, Applicants are referred to MPEP §2181. Basically, whether or not the claims expressly recite means plus function language is not dispositive on whether the claims set forth limitations that should be interpreted under 35 U.S.C. §112, 6th ¶. See MPEP §2181 I. There, instances are disclosed where means plus function language was not used, but the claims were nevertheless determined to fall within 35 U.S.C. §112, 6th ¶. Specifically, a limitation of "a lever moving element for moving a lever" was construed as a means plus function limitation invoking 35 U.S.C. §112, 6th ¶, even though means plus function language was not present. Generally, the rule appears to be that if a claim limitation is described in terms of its function rather than its

structure, then the limitation may invoke 35 U.S.C. §112, 6th ¶. Correspondingly, if structure is present with the functional limitation of a claimed element, even though the claim limitation expressly sets forth means plus function language, then the claim might not invoke 35 U.S.C. §112, 6th ¶. Thus, the dispositive issue is whether the claim recites sufficient structure for an apparatus claim, or acts for a method claim, to perform the specified function.

Under the rationale of MPEP §2181 I, at least one element of each of independent claims 9 and 14 can be construed to invoke 35 U.S.C. §112, 6th ¶. It is maintained that it is sufficient for merely one element of each independent claim to invoke 35 U.S.C. §112, 6th ¶ for it to be rendered non-statutory under 35 U.S.C. §101. If even one element can be construed under 35 U.S.C. §112, 6th ¶, then it follows that the element could be realized as a signal embodiment, and if at least one element is realized as a signal embodiment, then the claim is non-statutory; the implication follows that an element of an encoder or decoder is embodied as a non-statutory signal, *i.e.* it is an element of software information that is currently being transmitted across a communication medium instead of being embodied in a material recording medium. Here, independent claim 9 sets forth at least “an analyzer for analyzing”, which is indeed the same conceptually as “a lever moving element for moving a lever”, insofar as it does not disclose any concrete structure for realizing the analyzing. Similarly, independent claim 14 sets forth the limitation of “a post-processor . . . configured to determine a non-uniform time segmentation”, which does not disclose any concrete structure within the functional limitation, and should be construed under 35 U.S.C. §112,

6th ¶. Saying that something is "a post-processor" or "a processor" for performing a function of calculation or determination of parameters is, in effect, no different from a recitation of "a post-processor means" or a "processor means" or "means for determining" the parameters. Thus, both independent claims 9 and 14 still present issues of non-statutory subject matter under 35 U.S.C. §101 to an interpretation invoked by 35 U.S.C. §112., 6th ¶, pursuant to the disclosure of a signal embodiment by Applicants' Specification.

Again, Applicants are encouraged to cancel the signal embodiment from Page 14, Line 34 to Page 15, Line 1 of the Specification. Cancellation of that embodiment from the Specification should resolve the issue of non-statutory subject matter. Amending independent claim 9 and 14 may not resolve the issue. The problem is with Applicants' Specification, and not necessarily with the claim language.

Therefore, the rejection of claims 9 to 10 and 14 to 15 under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter is proper.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARTIN LERNER whose telephone number is (571)272-7608. The examiner can normally be reached on 8:30 AM to 6:00 PM Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David R. Hudspeth can be reached on (571) 272-7843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Martin Lerner/
Primary Examiner,
Art Unit 2626
November 14, 2008